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THE FEATURES OF MOVEMENT OF THE MILITARY GOODS AND THE DUAL-USE GOODS ACROSS THE CUSTOMS BORDER OF UKRAINE

Summary

The present article provides the issues of transference the military goods and the dual-use goods cross custom border of Ukraine. The author formulated the concept of the transference the military goods and the dual-use goods cross custom border of Ukraine. The general principles of the movement of goods across the customs border of Ukraine are considered. The application of these principles to military goods and dual-use goods are characterized.

Keywords: national control, military and dual-use goods, export control, transfer the military goods and dual-use goods, principles of the movement of goods across the customs border of Ukraine.

UDC 342.415

SUBSIDIARITY AS THE PRINCIPLE: SOMETHING OLD OR SOMETHING NEW FOR UKRAINE?

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In Ukraine much emphasis is given to such a principle of constitutionalism and municipalism, as the principle of subsidiarity. One can notice that especially important role to this principle is given in the context of European integration. However, very often it is presented as a new idea, which came to Ukraine from the EU Member States, and that approach seems to be pretty controversial. The article analyzes one of the manifestations of the principle of subsidiarity, which Ukraine is familiar since the Soviet days – the bodies of self-organization of population. The author proves that the idea of subsidiarity for Ukraine is not new, but just almost neglected.

Keywords: local government, decentralization, municipal reform, the principle of subsidiarity as public authorities.

Scientific and practical problem. It should be noted that at present the Ukrainian legal literature shows the considerable interest in the principle of subsidiarity (from the Latin '*subsidiarius*' – *additional*). It is associated with a number of the successes Ukraine has made towards European integration. It is also very relevant nowadays in Ukraine, because the principle of subsidiarity is paired with the principle of unity of public authority.

But is subsidiarity something old or something new for Ukraine? Do we have any signs of subsidiarity? Will it be difficult to cultivate it in the Ukrainian municipal field? In this regard, the study of all aspects of the implementation of the principle of subsidiarity in Ukraine is appropriate and urgent issue of modern jurisprudence.

Overview of the relevant researches. Recent research and publications dedicated to issues of subsidiarity or to the bodies of self-organization of population belong to such an authors as P. Lubchenko, V. Tabolin, D. Krasikov, O. Orlovsky, O. Priyeshkina and others. Though some of these authors paid attention only to the bodies of self-organization of population, and the others – only to the principle of subsidiarity. So far only the author of this article shows the connection between the bodies of self-organization of population and the principle of subsidiarity. That is why that

research might be interesting to the specialists in the municipal law.

Article's thesis. In Ukraine much emphasis is given to such a principle of constitutionalism and municipalism, as the principle of subsidiarity. One can notice that especially important role to this principle is given in the context of European integration. However, very often it is presented as a new idea, which came to Ukraine from the EU Member States, and that approach seems to be pretty controversial. The article analyzes one of the manifestations of the principle of subsidiarity, which Ukraine is familiar since the Soviet days – the bodies of self-organization of population. The author proves that the idea of subsidiarity for Ukraine is not new, but just almost neglected.

The principle of subsidiarity is currently quite popular principle of the constitutionalism in Ukraine and in foreign countries, and at the supranational level (at the EU level). The reason can be in its versatility – this principle can be used for settlement of the relationships:

- between the supranational EU bodies and Member States,
- between state bodies and bodies of the subjects of federation,
- between state agencies and local governments, and so on.

As K. Entin noted, «the main purpose of the subsidiarity principle is the determination of the level, at which decisions should be taken in a particular area. It is based on the idea, according to which acts should be performed at the closest to the population level (the regional level or the national level). However, this does not mean that the subsidiarity principle is intended to protect the competence of the Member States – it means only that before taking any activity, there is a need to analyze the efficiency of such an act, based on scale and predictable results to identify the optimal level of actions» [1, p. 35-36]. D. Krasikov believes that «the principle of subsidiarity is a rule under which the parent organization assumes responsibility for the performance of any function only if lower-level organization is unable to do so» [2, p. 33].

In this regard, it should be emphasized again, that the principle of subsidiarity has the principle, that might be considered as its' pair. According to the researchers, in order to implement the concept of «good governance», these two principles are perfectly complementary to each other (it is the «principle of proper centralization» (solidarity) and the «principle of proper decentralization» (subsidiarity)) [3]. Nowadays Ukraine experiences the constitutional reform, and one of the main objects of this reform is to change the chapter of the Basic Law, dedicated to the municipal government. The relevant Draft Law is called 'On Decentralization of Powers'.

Turning to the legislation of Ukraine, the principle of subsidiarity is enshrined so far only in the Budget Code of Ukraine. In paragraph 1 of the Article 7 its norms specify, that the principle of subsidiarity is a «species distribution of the costs between the state budget and local budgets, as well as between local governments based on the need to provide the maximum possible approximation guaranteed service to their customers directly» [4]. Thus, the principle of subsidiarity has two components – financial subsidiarity and administrative subsidiarity. The active development of these two components of the principle of subsidiarity shows the current dynamics of the improvement of its contents and deepens its essence, and makes it easier for its implementation.

However, the number of references to the subsidiarity principle in the law is not exponential. We agree with the opinion T. Schilling on the fact that «if you take into account the subsidiarity seriously, it requires not only consolidate it into law. There is a further need to develop this provision» [5]. It is helpful to focus in subsequent parts of the article and consider the example of the problem of interaction between local governments and bodies of self-organization of population.

While researching the principle of subsidiarity at the local level, P. Lubchenko said that «the essence of this principle is that public authorities should intervene only to the extent and to the extent in which society and its group, ranging from individuals to families, local communities and other larger groups, unable to meet their diverse needs. Thus, in accordance with the principle of subsidiarity, transmit powers of the government to a lower level of power higher level is allowed

only to the extent that these powers can be better implemented at the highest level» [6, p. 119].

Regarding the possibility of applying the principle of subsidiarity at the local level, V. Tabolin writes, «in the municipal charters, defining the competence of governments of large cities, should follow the principle of subsidiarity, without which effective management of the city (urban region)» [7, p. 17-18]. He thus joins the opinion that the lowest level of the principle of subsidiarity is not the level that involves the interaction between public authorities and local governments. It is clear that in his view the principle of subsidiarity can be applied within a political unit – the city. Ukraine has one of the most likely example of this application is the interaction between local governments and bodies of self-organization of population.

Reviewing the status of bodies of self-organization of population as part of local government in Ukraine, the attention is attracted to the almost complete absence of doctrinal studies of the Institute (see exceptions [8, 9, 10]) and to the insufficient development of appropriate legal and regulatory framework – for example, at present there are several regulatory definitions of «bodies of self-organization of population», that are complementary to each other. But not even one of them is complete and correct. It seems that the resolution of this issue on a scientific level will facilitate appropriate amendments to the legislation, in turn, positively affect the dynamics of new and the efficiency of existing bodies of self-organization of population – part of local government in Ukraine.

R. Visser claimed that one of the conditions of application of the principle of subsidiarity is not only recognition of the institutions that will provide services (eg bodies of self-organization of population), but also the expand of their competence (the case of institutions of public nature) or the rights and obligations (in the case of private institutions of nature) and individuals the opportunity to participate in decisions relating to the relevant services [11, p. 27].

So, the bodies of self-organization of population isn't something new for Ukraine. They were the part of the municipal life since the independence of the country was proclaimed, and even earlier – they existed during the Soviet times. Sad, but true: during the Soviet times bodies of self-organization of population had more influence and were more active, than nowadays. Nowadays they are more democratic, that's true, – but much less influential. So it wouldn't be correct to claim, that for the ex-USSR republics the principle of subsidiarity at the local level is something new – so far even this one example shows, that only the title is new, the essence isn't.

The conclusion and the perspectives for the further researches. In Ukraine much emphasis is given to such a principle of constitutionalism and municipalism, as the principle of subsidiarity. One can notice that especially important role to this principle is given in the context of European integration. However, very often it is presented as a new idea, which came to Ukraine from the EU Member States, and that approach seems to be pretty controversial. The article analyzes one of the manifestations of the principle of subsidiarity, which Ukraine is familiar since the Soviet days –

the bodies of self-organization of population. The author proves that the idea of subsidiarity for Ukraine is not new, but just almost neglected. The perspectives of the further researches are seen in

the underlining of the other aspects of Ukrainian municipal reality, that can be seen as the aspects of the principle of the subsidiarity (if they would work in an effective way).

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ПРИНЦИП СУБСИДАРНОСТІ: СТАРА ЧИ НОВА ІДЕЯ ДЛЯ УКРАЇНИ?

Анотація

Наразі в Україні значна увага приділяється такому принципу конституціоналізму та муніципалізму, як принцип субсидіарності. Особливо важливої ролі він набуває у контексті європейської інтеграції. Однак слід зазначити, що дуже часто він подається як нова ідея, яка прийшла до України з країн-членів ЄС, що представляється спірним. У статті проаналізовано один з проявів принципу субсидіарності, який мав місце в Україні ще за часів її перебування у складі СРСР, – органи самоорганізації населення. Доводиться, що ідея субсидіарності в Україні не є новою, проте протягом часів незалежності її розвитку майже не приділялося належної уваги.

Ключові слова: місцеве самоврядування, децентралізація, муніципальна реформа, принцип субсидіарності, публічна влада.

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ПРИНЦИП СУБСИДАРНОСТІ: СТАРАЯ ИЛИ НОВАЯ ИДЕЯ ДЛЯ УКРАИНЫ?

Аннотация

Сейчас в Украине значительное внимание уделяется такому принципу конституционализма и муниципализма, как принцип субсидиарности. Особенно важную роль он приобретает в контексте европейской интеграции. Однако следует отметить, что очень часто принцип субсидиарности представляется как новая идея, которая пришла в Украину из стран-членов ЕС, и это представляется спорным. В статье проанализировано одно из проявлений принципа субсидиарности, которое имело место в Украине еще во времена ее пребывания в составе СССР, – органы самоорганизации населения. Доказывается, что идея субсидиарности в Украине не нова, однако после провозглашения независимости ее развитию почти не уделялось должного внимания.

Ключевые слова: местное самоуправление, децентрализация, муниципальная реформа, принцип субсидиарности, публичная власть.